

1 would agree with you.

2 MR. KIM: Your Honor, I offer
3 MASN's 51 into evidence.

4 JUDGE SIPPEL: Any objection?

5 MR. KIRK: No objection.

6 MR. KIM: May I approach, your
7 Honor.

8 JUDGE SIPPEL: It's received. It's
9 been identified and received. Yes, sir.

10 (The document referred to having
11 been previously marked as Exhibit
12 Number MASN 51 for identification
13 was received in evidence.)

14 BY MR. KIM:

15 Q Mr. Gerbrandt, I'm showing you
16 what's been marked as MASN Exhibit Number 352
17 for identification and I'll ask you, sir,
18 whether you recognize that document.

19 (Witness proffered document.)

20 A I don't recognize the document. I
21 do recognize the data.

22 Q Does this data reflect the results

1 of the surveys that you commissioned?

2 A I would take strong issue with the
3 -- where it's basically O's plus Nats in each
4 case. That data -- that was never calculated
5 and would never be calculated that way. So
6 that is our work, not mine or it's your
7 calculations, not the calculations that were
8 done or would be proper to be done.

9 Q With respect to the rest of the
10 data that undergirds, that calculation and all
11 the others, do you recognize it as coming from
12 your tables?

13 A Yes.

14 Q And the top of this reads middle
15 box summary, does it not?

16 A Yes, it does.

17 Q Are the middle box summaries, the
18 two and three ratings?

19 A Correct.

20 Q So again, the question was,
21 "Please rate your interest in each of the MLB
22 teams listed below," correct?

1 A Correct.

2 Q And so MASN Exhibit 352 tabulates
3 those results for people who indicated either
4 two or three rating in response to that
5 question, correct?

6 A Correct.

7 Q And isn't it true that with
8 respect to the aggregation of the Orioles and
9 the Nationals, in each market, in each survey,
10 that aggregation shows up as number one?

11 A If you add those two together,
12 yes.

13 Q Is it fair to say that there are a
14 lot of fans with a high interest, rated as a
15 four or five in your survey and seeing the
16 Orioles in each disputed market?

17 A Based on what?

18 Q The results of your service.

19 A No.

20 Q Is it fair to say that there are
21 even more fans who've expressed a medium
22 interest rated as two or three in seeing the

1 Orioles in each disputed market?

2 A The percentages are what they are.

3 Exactly as they say right here.

4 Q You stand by those percentages,
5 don't you, sir?

6 A These percentages, well, I don't
7 stand by your calculations but I stand by the
8 percentages that are shown here.

9 Q I will accept that answer. Mr.
10 Gerbrandt, did you ask Comcast when you
11 conducted your demand study whether they had
12 any internal studies that you should look at?

13 A I did not.

14 Q Wouldn't that internal analysis
15 have helped you make your opinion in this
16 case?

17 A My goal was to do an independent
18 analysis, so I'm not sure it would have made
19 any difference on my independent analysis.

20 MR. KIM: May I approach, your
21 Honor?

22 JUDGE SIPPEL: You may.

1 BY MR. KIM:

2 Q Mr. Gerbrandt, I'm showing you
3 what's been marked as MASN Exhibit Number 99
4 for identification. I'll ask you, sir,
5 whether you recognize that document.

6 (Witness proffered document.)

7 A I do not.

8 MR. KIM: And if I haven't, now I
9 would offer MASN Exhibit number 352 into
10 evidence.

11 JUDGE SIPPEL: Objection?

12 MR. KIRK: None.

13 JUDGE SIPPEL: Received, identified
14 and received.

15 (The document referred to having
16 been previously marked as Exhibit
17 Number MASN 352 for identification
18 was received in evidence.)

19 BY MR. KIM:

20 Q Mr. Gerbrandt, I will represent to
21 you that MASN Exhibit Number 99 was produced
22 by Comcast to MASN in the course of discovery.

1 Fair enough?

2 A Okay.

3 JUDGE SIPPEL: This is or is not
4 yet in evidence?

5 MR. KIM: It is in evidence, your
6 Honor.

7 JUDGE SIPPEL: It is?

8 MR. KIM: MASN 99 is in evidence.

9 JUDGE SIPPEL: Thank you.

10 BY MR. KIM:

11 Q Is the first page of MASN Exhibit
12 Number 99 an e-mail from a Kathy McMahon dated
13 May 18th, 2006?

14 A That's what it says.

15 Q And the subject says, "Carriage
16 Forecast", correct?

17 A Yes.

18 Q The first line of that e-mail
19 says, "Attached is a carriage forecast for
20 discussion based upon the current rate
21 structure without the Orioles". Did I read
22 that correctly?

1 A Yes, you did. I think you did,
2 yeah.

3 Q Let me ask you to turn your
4 attention to page 20 of that document. And I
5 apologize, some of the handwritten numbers are
6 cut off on the bottom. It's right after 19,
7 which is pretty clearly marked. Are you with
8 me, sir?

9 A No. I'm on page 20?

10 Q Yes, sir.

11 A The handwritten 20?

12 Q Yes, sir.

13 A Okay.

14 Q And --

15 A I don't see anything cut off,
16 that's why I was --

17 Q Okay, the Bates number, just so
18 I'm clear, is 8391.

19 A Okay, I'm on the same page.

20 Q And do you see where it says,
21 "Blue Ridge" on the left there, there are
22 three entries?

1 A Yes.

2 Q And if you look over to the fourth
3 column over it says, "Harrisburg", correct?

4 A Yes.

5 Q And if you look over to the
6 furthest right column it says "drop", correct?

7 A Yes.

8 Q If you go down a little bit
9 further, you see Kuhn to the left, K-u-h-n,
10 correct?

11 A Yes.

12 Q And then if you go again to the
13 fourth column, it references Harrisburg,
14 correct?

15 A Yes.

16 Q If you go all the way over to the
17 right, it says dropped, correct?

18 A It does.

19 Q Is this an internal Comcast
20 projection that if they lose Orioles rights,
21 CSNMA will be dropped by those providers in
22 the Harrisburg market?

1 MR. KIRK: Objection, foundation.

2 THE WITNESS: I'm --

3 JUDGE SIPPEL: Wait a minute, wait

4 a minute, wait a minute, wait a minute.

5 Foundation in -- go ahead. Do you want to

6 explain -- do you have -- he says he needs a

7 foundation for this.

8 MR. KIM: Your Honor, this is --

9 this is not a fact witness. This is an expert

10 witness.

11 JUDGE SIPPEL: Yes.

12 MR. KIM: If he can't interpret the

13 study, I think he'll tell us he can't

14 interpret the study.

15 JUDGE SIPPEL: Yes, and it comes

16 from --

17 MR. KIM: This is a Comcast

18 document.

19 JUDGE SIPPEL: All right. Was he

20 asked if he ever saw the document before?

21 MR. KIM: I did ask him, your

22 Honor. He said he wasn't aware of it.

1 JUDGE SIPPEL: You weren't aware of
2 this even though it's a Comcast --

3 THE WITNESS: No, sir, never seen
4 this one.

5 JUDGE SIPPEL: All right. I'm
6 going -- I'm sorry, I'm going -- on the basis
7 of your being tendered as an expert, you were
8 asked as to whether or not you can testify as
9 to the material, the data that is in this
10 report. Do you have the ability to do that?

11 THE WITNESS: I would have to; A,
12 study the document; B, figure out if I have
13 any questions about what some of the terms
14 meant and then I could answer that question.

15 MR. KIM: Your Honor, if I could
16 try to lay a little more foundation.

17 JUDGE SIPPEL: Try, sir.

18 MR. KIM: Okay.

19 BY MR. KIM:

20 Q This is a two-paragraph e-mail,
21 correct?

22 A Actually, I see three.

1 Q Okay, why don't you read them all
2 into the record if you don't mind?

3 A It's a forwarded e-mail.
4 "Attached is a carriage forecast for
5 discussion based on the current rate structure
6 without the Orioles. There are three
7 worksheets; aggressive, intermediate and
8 conservative. In the notes column, I noted
9 the contract status as some cannot potentially
10 drop us until their contract expires 12/31/07
11 but thought it was important to note as we do
12 our average cable rate each year. This plan
13 assumes that Comcast will continue to carry
14 the network in all areas except where we are
15 blacked out with Wizards.

16 If we lose the Orioles, affiliates
17 are expecting a rate reduction despite meeting
18 our current contractual obligations.
19 Furthermore, we indicated to several
20 affiliates that if we lost the Orioles we
21 would adjust accordingly. That is why in the
22 conservative plan many non-Comcast systems are

1 listed as dropping. I think some affiliates
2 may try and drop and see if they lose any
3 subs."

4 And then the next paragraph,
5 there's a reference to carriage forecast April
6 6th subs.xls. That's presumable a list to a
7 spreadsheet and then, "Please let me know if
8 you have any questions or if you think this is
9 off target".

10 Q Is that familiarizing you to what
11 this Excel spreadsheet is about, Mr.
12 Gerbrandt?

13 A Well, I just obviously read it
14 into the record. I would want to take some
15 time to study it to see if I could understand
16 what this is intended to do.

17 Q Isn't this drop analysis for CSN
18 if it was the Orioles?

19 A It doesn't say it's a drop
20 analysis but it does reference the fact that
21 in one of the scenarios they are looking at
22 non-Comcast systems dropping.

1 Q And you understand what the word
2 "drop" is, don't you?

3 A Yes.

4 Q What is a drop?

5 A A drop is when a system or an MSO
6 or an MBPT stops carrying a network at the end
7 of the affiliation agreement.

8 Q Did you think it was significant
9 that Comcast was projecting that operators in
10 Harrisburg would drop CSNMA once it lost the
11 Orioles?

12 A I want to see whether that was --
13 was that in all three cases; conservative,
14 moderate -- or conservative, intermediate and
15 aggressive?

16 Q I will be very candid with you,
17 Mr. Gerbrandt, I'm only talking about the
18 conservative projections, okay? But is that
19 significant to you, as an expert, they thought
20 about it under any state of the universe?
21 It's a yes or no answer, sir.

22 A I guess they're taking a look at

1 in the most extreme case that they would run
2 the risk of losing -- of being dropped. So --

3 Q Let's get --

4 A -- so that is -- I mean, it
5 appears to be that's exactly what they did.

6 Q Okay. Let's look at page 22. If
7 you go down the left-hand side, you see the
8 operator is called Charter, correct?

9 A Yes.

10 Q And in fact, you see all the way
11 from Charter down to JetBroadband on the left-
12 hand side, correct?

13 A Yes.

14 Q Okay, and then you have Roanoke on
15 the fourth column, correct, except for the one
16 Tri-Cities?

17 A Correct.

18 Q And then you see drops all the way
19 down except for the Tri-Cities, correct?

20 A Correct.

21 Q So it's significant to you, as an
22 expert, that Comcast was projecting internally

1 that once they lost the Orioles, all these
2 operators in Roanoke would drop it.

3 A Are we still looking at
4 conservative?

5 Q Yes, sir, haven't moved.

6 A Okay, it doesn't say, so I mean,
7 at least I can't easily find out. So pardon
8 asking the question.

9 Q Fair enough.

10 A No, it doesn't surprise me that in
11 the most conservative scenario that they would
12 consider that.

13 Q Let's just tidy it up and turn
14 over to the last page, page 24, and you see
15 three operators listed; Occidental, Rapid
16 Communications, and Scott Telecom; is that
17 right?

18 A Correct.

19 Q And those are for the DMAs,
20 Roanoke, Roanoke and Tri-Cities respectively,
21 correct?

22 A Correct.

1 Q And those are all listed as drops
2 as well, correct?

3 A That is correct.

4 Q Now, Mr. Gerbrandt, there's
5 something else in this document as well. If
6 you look at the operators in the Roanoke and
7 Tri-Cities region that are not dropping, those
8 are Adelphia and Comcast, aren't they?

9 A It does appear to be the case.

10 Q Okay. And this e-mail was
11 authored on May 2006, correct?

12 A Well, the original was authored
13 May 18th and it appears then it had been
14 forwarded May 22nd.

15 Q Thank you for that clarification.
16 That's a long time after Comcast was in the
17 process of acquiring Adelphia, correct?

18 A Since I don't know the date --
19 since sitting here I don't recall the date, I
20 can't answer that question one way or the
21 other.

22 Q Okay, as an expert, what

1 significance is it to you that all of the
2 independent operators in the Roanoke, Tri-
3 Cities region are projected as being a drop;
4 whereas, Comcast and its soon to be partner,
5 Adelphia, are not listed as drops?

6 A Well, again, in the -- the
7 significance to me again, without being able -
8 - comparing it to the moderate or the
9 intermediate and the aggressive case, it would
10 seem that in the most conservative, the most
11 extreme case, that they assume that if they
12 lost the Orioles that all non-Adelphia and
13 non-Comcast affiliates would drop CSN at the
14 end of the affiliation agreement.

15 Q Because it lost the Orioles.

16 A It's whatever the assumption made
17 that -- whatever the assumption was that
18 whoever authored the study made a
19 determination that in the most extreme case
20 that's what would happen. That's all I can
21 determine from this.

22 Q Doesn't the cover e-mail indicate

1 that it's based upon the projected loss of the
2 Orioles?

3 A It does but I also don't know if
4 there was anything else that went into the
5 analysis.

6 Q Is that a document you would have
7 liked to have seen before you rendered your
8 opinion in this case?

9 A I don't think it would have
10 changed my opinion.

11 Q Fair enough.

12 MR. KIM: May I approach the
13 witness, your Honor?

14 JUDGE SIPPEL: You may, sir.

15 BY MR. KIM:

16 Q Mr. Gerbrandt, I'm showing you
17 what's been marked as MASN Exhibit Number 99A
18 as in Alpha, and I'll ask you, sir, whether
19 you recognize that document.

20 (Witness proffered document.)

21 A I do not.

22 Q I will represent to you, Mr.

1 Gerbrandt, that I did the best I could to try
2 to line up the notes column with the remainder
3 of the schedule that we just looked at. If
4 you'll recall, Exhibit 99 has a notes column
5 that appears on a separate page because it is
6 too wide for the page. Do you see that, in
7 99?

8 A Okay.

9 Q And so what I tried to do was line
10 up in those columns so that you could see
11 where it was actually attached to the
12 spreadsheet. Are you with me?

13 A Yes.

14 Q Now, I'm not going to ask you any
15 specific questions about whether the notes
16 column actually line up correctly with the
17 system or head end or other information, okay?

18 A Okay.

19 Q The only question I'm going to ask
20 you is, do you see anywhere in the notes
21 column for the Southwest Virginia market where
22 the notation is "Will keep because of ACC

1 basketball"?

2 A I -- after a cursory exam, I
3 didn't see that phrase. Was I supposed to?

4 MR. KIM: Your Honor, I offer MASN
5 Exhibit 99A for demonstrative purposes only.

6 JUDGE SIPPEL: Demonstrative
7 purposes only, are there any objections to
8 that?

9 MR. KIRK: Not for demonstrative
10 purposes only.

11 JUDGE SIPPEL: Okay, it's in for
12 those purposes.

13 (The document referred to having
14 been previously marked as Exhibit
15 Number MASN 99A for identification
16 was received in evidence.)

17 BY MR. KIM:

18 Q Mr. Gerbrandt, if I could turn
19 your attention to ACC basketball, you looked
20 at ACC basketball in the Roanoke, Lynchburg
21 and Tri-Cities markets, correct?

22 A Correct.

1 Q And you have previously testified
2 as to the important criteria for examining the
3 value of sports programming, correct?

4 A Yes.

5 Q You mentioned five of them. The
6 first one is whether the content is exclusive,
7 right?

8 A Yes.

9 Q And the second was whether it is
10 unique?

11 A Correct.

12 Q The third is whether there are
13 lots of live games.

14 A Correct.

15 Q The fourth is whether there is an
16 under-served demographic niche.

17 A That is correct.

18 Q And the fifth was is it available
19 all year or just seasonal, correct?

20 A Yes, those were -- that was -- I
21 believe you just cited my testimony in the NFL
22 network case.

1 Q Indeed, sir, and is that testimony
2 still true and correct?

3 A For the NFL network case, yes.

4 Q Well, do you stand by it today?

5 A I stand by what I testified in the
6 NFL network case, yes, absolutely.

7 Q But I guess my question is, is
8 that testimony only for the NFL case or is it
9 also true of what you believe on how to assess
10 the value of sports programming?

11 A I'd say generally speaking that is
12 -- those are valuable criteria.

13 Q It wouldn't be a very good opinion
14 if it only applied to one network, correct?

15 A Well, it's not unusual for
16 opinions to apply to particular situations or
17 in a particular context.

18 Q So I'm asking you, if I'm trying
19 to assess ACC programing, its value, can I use
20 those five criteria?

21 A Well, we're talking about the
22 difference between programming and a network

1 and I think those are two fundamentally
2 different things. I think programming
3 inherently by its nature is seasonal. So, you
4 know, one was in the context of a network.
5 Now, you're asking me, "Do you apply that to
6 looking at a specific programming package,"
7 and I think those are two very different
8 things. So we're not talking about programming
9 generically.

10 One was how do I -- in the NFL
11 case, how do I assess a network, a very
12 different kind of situation than when you're
13 actually assessing the value of a particular
14 sports programming package.

15 Q Was your testimony in the NFL case
16 that the NFL network was available all year
17 and therefore, it was valuable?

18 A I think that mischaracterizes my
19 testimony. We were talking about the network
20 was available all year round. The marquee
21 programming was only eight games.

22 Q Correct. And weren't you using

1 those five criteria to examine the eight-game
2 package?

3 A Again, I think you have to take it
4 into context and it was that the entire
5 pricing structure of the network was based on
6 eight -- on those eight games.

7 Q Correct.

8 A And as opposed to assessing the
9 value of a seasonal programming package. I'm
10 sorry, they are -- you use -- you have to take
11 it in context.

12 Q Mr. Gerbrandt, weren't you using
13 those five criteria in the NFL case to assess
14 the value of the eight-game package, the NFL
15 network shows?

16 A No, we were using -- we were using
17 the criteria to evaluate the network.

18 Q Okay, and you criticized the fact
19 that that eight-game package was only shown
20 seasonally, correct?

21 A No, I criticized the pricing
22 structure of the network. Fundamentally, the

1 NFL case was about price. I think ultimately
2 even the settlement was ultimately about
3 price. So it was an issue of value and an
4 issue of price that, you know, you were --
5 consumers were being asked to pay a very
6 significant license fee, the cable operators
7 and ultimately passed onto the consumers, for
8 a network whose marquee programming only --
9 and they were asked to pay 12 -- you know,
10 year round for an eight-game package that only
11 occurred late in the fall.

12 So you have to take it in the
13 context of what the issues were in that case.
14 It was a pricing case.

15 Q Is ACC basketball exclusive to
16 Comcast SportsNet?

17 A Not to my knowledge.

18 Q Isn't it true that ACC basketball
19 is shown on national networks?

20 A I'm -- I understand that to be the
21 case, yes.

22 Q It's shown on ESPN?